IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 253 of 2004 (S/B)

Date of decision: 24th August, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to the reporters for reporting? ( )

- Whether the reporters be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 253 of 2004 (S/B)

Smt. Suman Mishra,
W/o Shri Divakar Mishra,
R/o Rishiku Ayurveda Mahavidhayalaya,
Haridwar & another. ……. Petitioners

Versus

State of Uttaranchal,
Through Principal Secretary,
Medical (Education) Department & others. …….. Respondents

Mr. S.N. Babulkar, learned counsel on behalf of the petitioners.
Mr. N.C. Gupta, learned Standing Counsel for respondents.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Irshad Hussain, J.

Date: 24th August , 2004

(Per Hon'ble the Chief Justice)

1. Heard Mr. S.N. Babulkar, learned counsel for the petitioners and Mr. N.C. Gupta, learned Standing Counsel for the State.

2. This writ petition is filed by the two lecturers in Sanskrit, who have been admittedly working in their capacity since 1988. In this writ petition, they claimed their regularization w.e.f. the date of their continuous officiation and also for consequential benefits including seniority and promotion.

3. Form the writ petition, it is apparent that there was a judgment of the Allahabad High Court, whereby, the writ petition field by the petitioners (including the present petitioners) for equal pay and equal treatment was allowed vide judgment dated 15th December, 1995. The number of the said writ petition was 30619 of 1993. In the last portion of that judgment, the learned Judge has observed as follows:

> "In view of the aforesaid decision, this petition is allowed. The impugned order dated 16.6.91 is set aside and respondents are directed to pay same pay scale allowances and other benefits as paid to the regular of Govt. Ayurvedi College Lucknow from this date of their appointments shall also be paid

within three months of production of certified copy of this order before the authorities concerned.

As regard question of regularization in my opinion, this depends on the relevant rule. Hence the petitioners may make a representation to the concerned authorities for regularization and the same will be decided within three months thereafter in accordance with law."

4. It is an admitted case that these two petitioners, thereafter, started getting the regular salary commensurate to their posts. However, the question of regularization had remained though the petitioners had made representation to that effect. After the judgment was passed, these two lecturers opted for the State of Uttaranchal and they were accordingly sent there and are now serving in Uttaranchal. That is an admitted position. They, therefore, made a representation to the State of Uttaranchal also. Last such representation, which appears on the record, appears to be dated 19.5.2004. But even before that, the Joint Secretary, Uttaranchal had sought for the regularization proposal form the Director, Ayurvedic and Unani Services, Uttaranchal. This appears to be an order dated 12.2.2002. It is apparent that in pursuance of that, the Director, Ayurvedic & Unani Service also sent a proposal by his communication bearing No. 332/2002-2003 dated 16th May, 2002. That proposal is also before us. However, it seems that in the meantime, a seniority list came to be published, where the petitioners' names are not to be found. It is because of that, that the petitioners have come before, us. There can be no question that the petitioners' representations were already pending even before the Government of Uttaranchal and probably because of that, the Joint Secretary, Uttaranchal had sent a proposal dated 12.2.2002 inviting the Director, Ayurvedic & Unani Services to sent the proposal for regularization of the petitioners. Now, it seems that, that proposal has already been sent. It is, therefore, strange that the order should not have been passed on the proposal sent by the Director, Ayurvedic & Unani Services though it is now pending for over tow years.

4. Under the circumstances, we direct the Government of Uttaranchal to pass necessary orders on the proposal sent by the Director, Ayurvedic & Unani Services dated 16th May, 2002. However, it is clarified that the orders shall be passed within one month of the date of our order reaching the Government. Needless to mention, that the petitioners should be entitled to all the benefits as are available to them in law after the necessary orders are passed.

5. Writ petition is disposed of with this direction.

(Irshad Hussain, J.) **(V.S. Sirpurkar, C.J.)**
24.8.2004 **24.08.2004**

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